

CHAPTER NO. 854

SENATE BILL NO. 3090

By Carter, Atchley

Substituted for: House Bill No. 2876

By Sargent, McDaniel, West

AN ACT To amend the Tennessee Consumer Protection Act of 1977, Title 47, Chapter 18, Part 10, relative to credit services businesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-1002(5)(B)(i), is hereby amended by inserting the term "directly" between the words "negotiating" and "for".

SECTION 2. Tennessee Code Annotated, Section 47-18-1003(1), is hereby amended by deleting the language contained therein and adding the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, including all representations made orally or in writing. Full and complete performance means fulfillment of all items listed in the contract and other solicitations or communications to consumers;

SECTION 3. Tennessee Code Annotated, Section 47-18-1003, is hereby amended by deleting the word "or" at the end of subsection (3), by removing the period at the end of subsection (4) and by adding thereto a semicolon ";", followed by the word "or", and by adding the following subdivisions:

(5) Create, or assist or advise the consumer to create a new credit record by using a different name, address, social security number, or employee identification number;

(6) Provide, in any manner, the services of a credit services business within this state, without registering a bond consistent with the provisions of Section 47-18-1022;

(7) Remove, assist or advise the consumer to remove or otherwise alter adverse information from the consumer's credit record which is accurate or not obsolete;

(8) Create, assist or advise the consumer to request that positive information be inserted or included on the consumer's credit record which is false, inaccurate or obsolete;

(9) Use a program or plan which uses or employs installment payments featuring payments charged directly to a credit card prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer; or

(10) Engaging in any violation of the federal Consumer Credit Protection Act.

SECTION 4. Tennessee Code Annotated, Section 47-18-1005, is hereby amended by deleting the term “and” at the end of subparagraph (2), by deleting the period (.) at the end of subparagraph (3) and substituting a semicolon (;), and by adding the following new subparagraphs:

(4)(A) Name and address of the surety company which issued the bond in accordance with § 47-18-1011;

(B) A statement explaining the consumer's right to proceed against the bond; and

(5) A complete and accurate statement of the availability of non-profit credit counseling.

SECTION 5. Tennessee Code Annotated, Section 47-18-1006, is hereby amended by deleting the terms “third business day” and substituting therefor the terms “fifth business day”, wherever it appears.

SECTION 6. Tennessee Code Annotated, Section 47-18-1008, is hereby amended by deleting the language contained in the statute in its entirety and substituting the following:

Damages, Private Actions.

(a) In any private action, any credit services business, which willfully fails to comply with any requirement imposed under this part with respect to any consumer, is liable to the consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure; or any amount paid by the person to the credit services business whichever is greater.

This remedy is supplemental to any other remedy contained within this chapter.

(2) Such amount of punitive damages as the court may allow.

(b) In any private action, any credit services business which is negligent in failing to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure.

SECTION 7. Tennessee Code Annotated, Section 47-18-1009, is hereby amended by deleting the word “An” at the beginning of the first sentence and adding the words “A private”. Tennessee Code Annotated, Section 47-18-1009, is hereby further amended by adding the following sentence at the end of the statute:

No action brought by the Attorney General shall be subject to the limitation of actions contained herein.

SECTION 8. Tennessee Code Annotated, Section 47-18-1010(a), is hereby amended by deleting the subsection in its entirety and substituting the following language:

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled at Part 1 of this chapter. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.

SECTION 9. Tennessee Code Annotated, Section 47-18-1011, is hereby amended by deleting the language contained therein in its entirety and substituting the following:

(1) In order to provide a degree of protection to customers of credit services businesses, each credit services business shall post a bond of one hundred thousand dollars (\$100,000) with the Department of Commerce and Insurance. Such bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner.


(2) The bond must be maintained for two (2) years following the date on which the credit services business ceases to conduct business in this state.

(3) In an action brought by the Attorney General pursuant to § 47-18-1010, the Attorney General shall have the right to request that the total amount of the bond posted by the credit services business be awarded to the State for consumer restitution or civil penalties.

SECTION 10. Tennessee Code Annotated, Section 47-18-1005(1)(C), is amended by inserting a comma "," after the language "nominal charge" followed by the language: "not to exceed eight dollars (\$8.00)." Tennessee Code Annotated, Section 47-18-1005(1)(C), is further amended by deleting the language "thirty (30)" and substituting instead the language "sixty (60)".

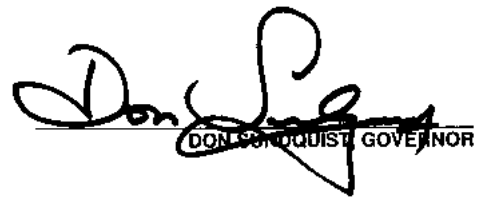
SECTION 11. This act shall become effective upon becoming a law, the public welfare requiring it.


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

PASSED: April 20, 1998

APPROVED this 1st day of May 1998


DON SUNDQUIST GOVERNOR